Government Data Rights Under the FAR

Works of the U.S. Government

- Copyright protection is not available for any work of the United States Government
  - work prepared by an officer or employee of the U.S. Government as part of that person's official duties
- But the United States is not precluded from receiving and holding copyrights transferred to it by assignment, bequest, or otherwise

Contractor Prepared Works

- Unlike U.S. Government works, works produced under government contracts are protected under U.S. Copyright Law
- Copyright ownership depends on the terms of the contract
- Civilian agencies and NASA are subject to the Federal Acquisition Regulations (FAR)

FAR Data Rights Provisions

- FAR Subpart 27.4 - Rights in Data and Copyrights
  - provides guidance for civilian agencies and NASA
- Contract Clauses
  - Rights in Data - General (52.227-14)
  - Rights in Data - Special Works (52.227-17)
  - Rights in Data - SBIR Program (52.227-20)
- Agencies may also have their own FAR Supplements that should be followed

Rights in Data General Clause - Contractor's Right to Assert Copyright

- Contractors may assert copyright without prior approval of the Contracting Officer
  - In scientific and technical articles
    - based on or containing data first produced in performance of the contract, and
    - published in academic, technical or professional journals, symposia proceedings or the like
- Government rights arise upon creation of articles
  - Contractor may assign copyright to publisher when published in academic, technical or professional journal
  - Assignment is subject to Government's prior rights

Rights in Data General Clause - Contractor's Right to Assert Copyright

- Prior written permission of Contracting Officer is required to assert copyright
  - In all other data first produced in the performance of the contract
    - data means recorded information, regardless of form or the media on which it may be recorded
    - includes information of a scientific or technical nature

Rights in Data General Clause - Government's Unlimited Rights

- Unless contractor asserts claim to copyright, Government has unlimited rights
  - In all data first produced in the performance of a contract, and
  - In all data delivered under a contract
    - unless provided otherwise in the contract (e.g., limited rights data)

Rights in Data General Clause - Government's Unlimited Rights

- Government's unlimited rights include
  - Right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform and display publicly, in any manner and for any purpose, and to have or permit others to do so
  - Examples of permissible use
    - may provide data to another contractor
    - may distribute data to the general public
    - may post data to a public web site

Rights in Data General Clause - Government's Right in Contractor Copyrighted Work

- When copyright asserted
  - Contractor must place copyright notice and acknowledgment of government sponsorship (w/ contract number) on the data
    - when delivered to the Government,
    - when published, and
    - when deposited for registration with Copyright Office
  - Government agrees not to remove contractor's copyright notice
    - Copyright notice should be included on all Government reproductions of data
  - If no copyright notice is placed on the work
    - Government obtains unlimited rights
  - Otherwise, Government obtains a license to the work

Rights in Data General Clause - Government's Right in Contractor Copyrighted Work

- License, often called a "Government Purpose License," provides right to
  - Reproduce, prepare derivative works, distribute copies to the public, and perform and display publicly, by or on behalf of the Government
  - Examples of permissible use under Government Purpose License
    - use the work within the Government without restriction
    - release the work outside the Government for governmental purposes, e.g.,
      - for performance of a government contract
    - authorize persons to whom release has been made to exercise license rights on behalf of the government

Rights in Data General Clause - Government's Right in Contractor Copyrighted Work

- Dissemination to the general public may or may not be a governmental purposes
  - For example, under NASA's Space Act, it is a governmental purpose
    - to provide for the widest practicable and appropriate dissemination of information concerning NASA's activities and their results
      - based on Space Act, NASA may publicly distribute scientific and technical articles based on or containing data first produced in the performance of a NASA contract
  - Consult your General Counsel regarding similar language in Agency's originating or authorizing legislation

Rights in Data General Clause - Government's Right in Scientific & Technical Articles

- When public dissemination is considered a governmental purpose
  - Government purpose license includes right to use and distribute scientific and technical articles
    - "as submitted" to a publisher, and
    - "as published" in a journal - if publisher has not added original, copyright protected material
      - e.g., publisher prepared abstract or peer-review comments
  - However, it is a good idea to obtain publisher's permission to reuse or republish the article "as published" in the journal

Rights in Data General Clause - Government's Right in Scientific & Technical Articles

- When public dissemination is not considered a governmental purpose
  - Must obtain permission from copyright owner to reuse or republish scientific and technical articles
  - Permissible to place individual bibliographic citation to journal article, and link to publisher's web site, on Government web site

Rights in Data General Clause - Government's Right in Scientific & Technical Articles

- Government has rights in more than deliverables,
- As a practical matter Government may have difficulty getting access to data unless
  - Data is delivered to the Government by the Contractor, or
  - Contractor publishes data with a notice acknowledging the Government's sponsorship
    - FAR requires an acknowledgment of Government sponsorship of contractor publications
- It is advisable that works in which the Government desires rights are identified in the contract as deliverables

Rights in Data - Special Works

- Prior written permission of Contracting Officer is required to assert copyright
- Contracting Officer may instead direct contractor to assign the copyright to the Government
  - used in contracts that are primarily for the production of data for the Government's own use, or
  - when there is a specific need to limit distribution and use of the data
  - FAR 27.405 provides guidance

Rights in Data - Special Works

- FAR allows agencies, via Agency FAR Supplement, to
  - Place limitations or restrictions on the contractor's right to use, release, reproduce, distribute, or publish data first produced under the contract
  - Including a requirement to assign copyright to the Government
    - NASA FAR Supplement (1852.227-14) includes right to direct assignment of copyright in software

Rights in Data - SBIR Program

- SBIR contractors may assert copyright without prior approval of the Contracting Officer
  - unless there is specific contract language to the contrary
- If claim to copyright is made
  - Government gets same license as it receives under the FAR general data rights clause
- Additional restrictions on use of “SBIR Data” may apply
  - SBIR data is:
    - data first produced in performance of an SBIR contract,
    - not generally known,
    - not already available to the Government, and
    - not made available to others without an obligation of confidentiality

Rights in Data - SBIR Program

- When SBIR Data is delivered to the Government with “SBIR Rights Notice” provided in the clause
  - Government may use SBIR data for government purposes only
  - Cannot disclose the data outside the Government for a specified period of time (usually 4 years)
    - restriction intended to provide incentives for development or commercialization of technology by the private partner
- If not marked with “SBIR Rights Notice”
  - No additional restrictions on Government’s use